

In the Court of Appeals of the State of Alaska

Cim J. Blair,

Appellant,

v.

State of Alaska,

Appellee.

Court of Appeals No. **A-13186**

Order

Request for Representational Hearing

Date of Order: **October 12, 2021**

Trial Court Case No. **3HO-16-00188CR**

The Appellant, Cim Joel Blair, is currently represented in this appeal by attorney Michael Horowitz, under contract with the Public Defender Agency. In September 2021, Blair filed a pro se motion asking this Court to remand this case for a representation hearing. Blair explained that he believed that his current attorney, Horowitz, may have a disqualifying conflict of interest.

In his pleading, however, Blair acknowledged that he has no dispute with Horowitz, and that Horowitz has performed professionally and adequately communicated with Blair. Instead, Blair indicated that an attorney from the Public Defender Agency, Assistant Public Defender Douglas Moody, “has made [Blair] aware of a pre-existing conflict of interest.”

In response to Blair’s concerns, this Court directed Assistant Public Defender Douglas Moody to file a response to Blair’s pleading, and in particular to address Blair’s concern that his appellate attorney, Horowitz, might have a disqualifying conflict of interest. This Court also invited Horowitz to file a response to Blair’s pleading.

Both attorneys have now filed responses. In his response, Moody states that the Public Defender Agency is not aware of any conflict that would prevent

Horowitz from representing Blair in this appeal. Moody acknowledges, however, that the Agency *does* have a conflict of interest that prevents the Agency from representing Blair in his current post-conviction relief litigation in the superior court. In particular, Moody explains that the Agency has an institutional interest in preserving the reputation of its contract attorneys and thus, is conflicted in its ability to pursue any potential ineffective assistance of counsel claims against Horowitz. Moody states that because of that conflict, the Agency is withdrawing from Blair's post-conviction relief cases. He does not point to any particular claims of ineffective assistance of counsel against Horowitz that have been identified at this point.

For his part, Horowitz explains that he is not aware of any conflicts of interest that would preclude his representation of Blair. Horowitz also states he is not aware of any duty to any other client or former client that limits his full representation of Blair.

Based on Blair's pleading and the responses filed by the attorneys, this Court is satisfied that a remand for a representation hearing is not necessary at this point. In reaching this conclusion, the Court notes that Blair based his request for a representation hearing primarily on Moody having told Blair that the Agency had a potential conflict of interest in Blair's post-conviction relief litigation. The Agency now intends to withdraw from Blair's post-conviction relief cases. Given the early stage of that litigation, the identified conflict in those cases does not affect the Agency's or Horowitz's representation in this appeal. *See Blair v. Superior Court*, Court of Appeals File No. A-13275 (Order dated Dec. 7, 2018) (stating that "Blair's mere filing of [a] claim for post-conviction relief [alleging incompetence against the Public Defender

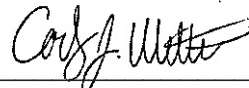
Agency] does not disqualify the Public Defender Agency from representing Blair in his direct appeal — although Blair’s claims of ineffective assistance of counsel would obviously disqualify the Agency from representing Blair in the post-conviction relief litigation itself”).

Accordingly, **IT IS ORDERED:**

Blair’s motion for a remand for a representation hearing to determine if attorney Michael Horowitz has a disqualifying conflict of interest in representing Blair in this appeal is **DENIED**.

Entered at the direction of an individual judge.

Clerk of the Appellate Courts



Carly Williams, Deputy Clerk

cc: Cim Blair at Wildwood Correction Center
Distribution:

Email:
Horowitz, Michael L., Public Defender - Contract
Ringsmuth, Eric